REPUBLIC OF KOREA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Korea was $8.3 billion, an increase of $0.9 billion from the $7.4 billion trade deficit in 1998. In 1999, Korea was the United States' 6th largest export market. In 1999, two-way merchandise trade between the United States and Korea totaled $54.3 billion, compared with $40.4 billion for 1998. U.S. exports to Korea in 1999 were nearly $23 billion, a 38.8 percent increase from the 1998 figure of $16.5 billion. U.S. imports from Korea in 1999 were $31.3 billion, a 30.6 percent increase from the 1998 figure of $23.9 billion. The stock of U.S. foreign direct investment in Korea in 1998 was $7.4 billion, a 14.5 percent increase from 1997. U.S. foreign direct investment is mainly concentrated in manufacturing, banking, and services.

OVERVIEW

Korea is one of the United States' major trading partners. Korea has long been known as one of the most difficult markets in, or with, which to do business. While the Korean President has committed to a more open, market-oriented economic policy, and Korea has implemented reforms, particularly in the financial sector, many of its structural reforms, for example in the corporate sector, have yet to be implemented. The Korean Government has made efforts to break the unhealthy linkages between government, banks, and the *chaebol*, which have historically impeded competition and market access, both in Korea and in other markets. These linkages also have resulted in excessive debt, over-capacity and uneconomic investments. Some complacency has set in, as the economy has recovered rapidly from the economic crisis. The July 1999 bankruptcy of the Daewoo Corporation, however, showed the risk of delaying needed reforms while prodding the Korean Government to pursue further economic reform and restructuring. The Korean Government will need to reprivatize the Korean banking sector; Korean *chaebols* will need to complete restructuring; and the Korean financial and corporate sectors will need to adopt international business standards and practices.

The Korean economy recovered rapidly in 1999 from the economic crisis. Economic growth rebounded to about 10 percent after falling by nearly six percent in 1998. Inflation was under control at about one percent and unemployment levels were cut in half from the peak during the economic crisis. Korean imports from the world, which dropped sharply in 1998 because of the economic crisis, grew by 28 percent in 1999 to $119.7 billion, and exports to the world increased by nine percent to $144.2 billion. As such, Korea's global trade surplus narrowed in 1999 to $24.5 billion but continued to be substantial. In 2000, Korea's trade surplus is expected to narrow further to about $12.5 billion.

IMPORT POLICIES

Tariffs and Taxes

Korea bound 91.1 percent of its tariff line items in the Uruguay Round negotiations, and Korea's average tariff was 7.9 percent in 1999. Korea's tariffs on all agricultural products, except rice (HS 1006), are bound, although tariffs on several important fishery products remain unbound. Between 1995 and 2004, Korea will implement its Uruguay Round commitments to lower duties on more than 30 agricultural products of primary interest to U.S. exporters. These products include intermediate and high value items such as vegetable oils and meals, processed potatoes, mixed feeds, feed corn, wheat, fruits, nuts, popcorn, frozen French fries and breakfast cereals.

Under its Uruguay Round commitments, Korea also established tariff-rate quotas (TRQs) that will either provide for minimum access to a previously closed market or maintain pre-Uruguay Round access. (See also "Quantitative Restrictions, TRQs and Import Licensing.") In-quota tariff rates are at zero or low levels, but over-quota tariff rates on some products are prohibitive. Specifically, natural and artificial honey are assigned an over-quota rate of 257 percent; skim and whole milk powder, 198 percent; barley, 342 percent; barley malt, 284 percent; potatoes and potato preparations, over 300 percent; and popcorn, 665 percent.

Duties are still very high on a large number of high value agricultural and fishery products. Korea imposes tariff rates above 40 percent on many products of interest to U.S. suppliers, including shelled walnuts, table grapes, beef, canned peaches and fruit cocktail, pears and a variety of citrus fruits. Products subject to a 30 percent or higher tariff rate include certain meats, most fruits and nuts, many fresh vegetables, starches, peanuts and peanut butter, soups, various vegetable oils, juices, jams, beer and some distilled spirits and dairy products.

Korea is in the process of reducing bound tariffs to zero on most or all products in the following sectors: paper, toys, steel, furniture, semiconductors and farm equipment. Korea is harmonizing its chemical tariffs to final rates of 0, 5.5 or 6.5 percent, depending on the product. From pre-Uruguay Round levels, tariffs on scientific equipment are being reduced by 65 percent. On textile and apparel products, Korea has harmonized and bound most of its tariffs to the following levels: 7.5 percent for man-made fibers, 15 percent for yarns, 30 percent for fabrics and made-up goods and 35 percent for apparel.

U.S. firms in a number of sectors continue to report that the combination of tariffs and value-added taxes for agricultural and manufactured products is often sufficient either to keep imports out of the Korean market or to make their prices uncompetitive. One example is the Korean motor vehicle market. Imported vehicles are subject to a tariff rate of eight percent – more than three times the U.S. tariff. Korea then levies multiple, cumulative high taxes on top of the eight percent applied tariff. Three of these taxes are based on engine size and have a disproportionate impact on imported vehicles. Although Korea eliminated some of its motor vehicle taxes and reduced others under the 1998 Memorandum of Understanding on market access for foreign motor vehicles, the combination of the tariff and engine-displacement-based taxes levied on the duty-paid value of imported cars still results in a mark-up that impedes their competitiveness vis-a-vis their domestic competitors.

Another example of the tariff and *ad valorem* tax problem relates to Western-style distilled spirits, which were previously assessed a much higher excise tax than the traditional, Korean-style spirits. This tax was levied on the duty-paid value of the imported liquor. The Korean Government, however, enacted legislation in December of 1999 that harmonized the tax rate at 72 percent (plus a 30 percent education tax) for all distilled spirits, including *soju*, effective January 1, 2000. This was done to comply with the WTO panel and Appellate Body rulings that the Korean Government's system of tax treatment for distilled spirits discriminated against foreign products.

Korea uses "adjustment tariffs," *i.e.*, raises its tariffs up to higher rates, to protect domestic producers. In 2000, Korea renewed for another year adjustment tariffs on 27 of the 30 items on which tariff adjustments were used in 1999, but reduced the tariff rates for 20 of these items. Among the 27 remaining items, 14 are seafood, including croaker and skate (two fish products of interest to U.S. exporters), six are agricultural and four are textiles. In 1997, Korea agreed, as a condition of its IMF stabilization package, to reduce the number of products subject to tariff adjustments. The U.S. Government has expressed concern about the way in which Korea implemented this commitment, however, because when the Korean Government shifted items back to the general tariff schedule, the tariff rates were maintained at the "adjusted" or increased rates, thereby negating any market access benefit.

In 1999, the U.S. Government discovered a discrepancy between Korea's applied tariff rates on several agriculture items – peanuts, popcorn, potato flour, potato flakes, and wheat and soybean meal – and its WTO bindings and bilateral tariff commitments made in a 1993 U.S.-ROKG Record of Understanding (ROU) and February 1994 exchange of letters. In February of 1999, U.S. Embassy officials in Seoul brought these discrepancies to the attention of the Korean Government. Korean officials acknowledged these discrepancies, and gave indications that they would search for ways to rectify them. Despite letters from high-ranking U.S. officials and subsequent bilateral meetings in which this issue was raised, a discrepancy in the tariff rates on some of these products remains in effect. The U.S. Government will continue to press Korea until its duties on all agriculture products are brought into compliance with Korea's WTO and bilateral commitments.

NON-TARIFF MEASURES

Import Diversification Program

On June 30, 1999, Korea removed the last tranche of 16 product categories from the import diversification program, thereby fulfilling its IMF/OECD commitments by bringing to an end the trade regime that had effectively barred imports of a broad range of consumer and industrial products from Japan, including some U.S. products sourced from Japan. This change in Korea's trade rules has increased foreign access to the Korean market, but also means new competition for U.S. products.

Internal Supports

Korea agreed as part of the Uruguay Round Agreement on Agriculture to reduce its domestic support (Aggregate Measurement of Support, or AMS) for agricultural products by thirteen percent during the implementation period that expires at the end of 2004. Because of the Korean Government's substantial increases in the level of domestic support provided during 1997 and 1998 to its cattle industry, it appears that Korea has violated its Agreement on Agriculture obligations. In each of those years, Korea provided domestic supports to agricultural producers, which in the aggregate, were higher than permitted pursuant to Korea's domestic support reduction commitments. The subject of this excessive level of support has been raised by the United States, Australia, New Zealand and Canada in dispute settlement proceedings in the WTO on Korea's beef import and distribution regime. A panel report in that dispute will be issued in May of 2000. The United States will continue to press Korea to honor its annual domestic support reduction commitments.

QUANTITATIVE RESTRICTIONS, TRQs and IMPORT LICENSING

Quantitative Restrictions

Under a U.S.-Korea 1993 Record of Understanding (ROU) and under Korea's Uruguay Round commitments, the Korean Government committed to liberalize, by January 1, 2001, its quantitative restrictions on the eight remaining items subject to balance-of-payments protection. These items consist mainly of live cattle (dairy and beef) and beef products (HS 0201 and 0202). The U.S. Government had to initiate WTO dispute settlement procedures in 1999 to ensure that Korea would follow through on its obligation to remove these balance-of-payment restrictions, and more broadly, to ensure that Korea adheres to WTO rules in the conduct of its beef import and distribution system. (See also "Beef.")

Korea's quantitative restrictions on rice expire in 2004.

TARIFF-RATE QUOTAS (TRQs)

Most imported goods no longer require government approval, but some products (mostly agricultural and fishery products) are restricted for import, *i.e.*, they are subject to quotas or TRQs with prohibitive over-quota rates. Korea implements quantitative restrictions through its import licensing system. A government export-import notice lists products that are restricted or prohibited.

Korea's administration of its TRQs on certain products raises additional market access problems. Per industry input, the U.S. Government has raised concerns about Korea's process for administering its quotas on rice and its TRQs, particularly those on oranges, as well as on value-added soybean and corn products. In some cases, Korea uses an auction to allocate in-quota quantities and in so doing, adds cost beyond tariffs to entering the Korean market. This raises questions about Korea's adherence to its WTO obligations.

On value-added soybean and corn products, the Korean Government continues to control allocation of the in-quota quantities. By aggregating raw and value-added products into the same TRQ, the Korean Government restricts access to the Korean market for value-added products, such as corn grits and soy flakes, while allowing entry of only the companion raw materials under the in-quota quantity.

Beef

Pursuant to a 1989 GATT panel ruling against Korea's measures on beef, Korea committed to phase out its balance-of-payment restrictions on beef. Subsequently, in 1990, and in July of 1993, the United States and Korea concluded exchanges of letters and Records of Understanding (ROUs) under which Korea agreed to annual increases in minimum market access levels for beef imports through 1995. The 1993 agreement also guaranteed direct commercial relations between foreign suppliers and Korean retailers and distributors and provided that a growing volume of beef be sold through that channel instead of through a state trading organization. Specifically, the agreement provided for the following: (1) an increase in the minimum annual quotas; (2) an increase in the number of Korean distributors that can undertake commercial transactions with U.S. exporters without Korean Government intervention – the Simultaneous Buy/Sell (SBS) system; (3) dramatically increased annual SBS sub-quota amounts; and (4) a ceiling on the mark-up levied on the duty-paid price of imported beef. Australia and New Zealand – the other two major suppliers of beef to Korea – also entered into identical agreements on beef trade with Korea. In December of 1993, the provisions of the July agreement, including the increasing, annual minimum market access provisions, were extended to December 31, 2000.

Pursuant to section 306 of the Trade Act of 1974, the USTR continues to monitor Korea's implementation of its commitments on beef imports. The U.S. and Korean Governments have met quarterly on the specifics of Korea's implementation record on the 1993 agreements. In 1997, Korea did not meet its annual commitment to import 167,000 metric tons of beef. In 1998, Korea fell short of its 187,000 metric ton quota by approximately 53 percent. In 1999, Korea again failed to meet its minimum market access commitment on beef.

Senior U.S. Government officials have repeatedly sought Korea's elimination of government impediments to the entry and distribution of foreign beef. In September and November of 1998, the U.S. and Korean Governments held talks, and in January of 1999, sat down again to try to reach agreement on a plan to establish a market-driven beef import system in Korea. No agreement was reached during these talks. As a result, the U.S. Government requested WTO dispute settlement consultations on February 1, 1999. When a settlement could not be reached at the March 1999 consultations, the United States requested formation of a panel, which the WTO Dispute Settlement Body (DSB) agreed to in May of 1999. Australia's subsequent request for the formation of a panel on Korea's beef measures was approved in July 1999. The DSB also agreed that the panel established in May to examine the U.S. complaint would examine the Australian complaint as well.

The first meeting of the combined panel was held in December of 1999, and the second meeting in mid-February of 2000. Canada and New Zealand are participating in the panel process as third parties.

The United States' complaint is focused on Korea's (1) requirements that imported beef be sold only in specialized imported beef stores; (2) Korean laws and regulations restricting the resale and distribution of imported beef by SBS super-groups, retailers, customers, and end-users; (3) discretionary import regime; (4) imposition of duties and charges in the form of mark-up, which is not provided for in Schedule LX; and (5) failure to fulfill its reduction commitment for domestic support.

Rice

The Korean Government continues to exercise full control over the purchase, distribution and end-use of imported rice. The state trading enterprise that administers the WTO-mandated minimum access program continues to purchase only low-quality Asian rice, as Korean law forbids the use of imported rice for purposes other than industrial or processing purposes. As a result, high quality U.S. rice is effectively shut out of the Korean market, fulfilling the Korean Government's oft-repeated statement that it will not allow imported table rice to be directly marketed to Korean consumers. In addition, Korea, once again, has allowed shipments of the 1999 minimum access purchases to extend into 2000. This unilateral Korean action has raised questions about Korea's compliance with its WTO obligations. The U.S. Government also is concerned with Korea's recent statements that Korean rice policies are "off the table" in the new multilateral agriculture negotiations just begun in the WTO as provided for in the Uruguay Round agreements. The United States will continue to actively engage Korea to ensure its full compliance with its current obligations on rice and to press for further liberalization of Korean rice policies.

Oranges

Quotas on fresh oranges were liberalized in July of 1997 to permit out-of-quota imports. The in-quota tariff rate is, and will remain, 50 percent, and the out-of-quota rate was 74.5 percent in 1999, and will be 69.6 percent in 2000 and 50 percent in 2004. The in-quota quantity for 2000 will be 8,343 metric tons and will be expanded at an annual growth rate of 12.5 percent through 2004.

The Cheju Citrus Cooperative, a Korean producer group, has controlled the allocation of the in-quota quantity of Korea's orange tariff-rate quota (TRQ) regime. In the past, Cheju has filled the quota, with most of the imports coming from the United States. In 1999, however, the quota was not filled. Also in 1999, Korea decided to auction a portion of the quota, despite protests from the United States, based on concerns that an auction system would add costs beyond Korea's bound tariffs to entering its market.

Import Clearance Procedures

U.S. suppliers of food and agricultural products continue to encounter trade-impeding practices in Korean ports of entry, including on products for which market access was liberalized under bilateral or multilateral trade agreements. After WTO dispute settlement consultations with the United States between 1995 and 1999, the

Korean Government revised its import clearance procedures by; (1) expediting clearance for fresh fruits and vegetables; (2) instituting a new sampling, testing and inspection regime; (3) eliminating some non-science-based phytosanitary requirements; (4) beginning revisions of the Korean Food and Food Additives Codes, for example, by bringing Korean pesticide residue level standards for citrus into conformity with Alimentarius standards; and (5) requiring ingredient listing by percentage for major, rather than all, ingredients.

Specifically, in December of 1999, the Ministry of Health and Welfare (MHW) revised the ministerial ordinance of the Food Sanitation Act. This revision changed the food inspection period to two days for document review, three days for organoleptical testing, five days for random testing, and 10 days for laboratory testing. Food products requiring incubation testing will be held up to 18 days.

Also in 1999, the Korea Food and Drug Administration (KFDA) issued for public comment proposed revisions to the Food Code, the Food Additives Code, and Labeling Standards for Food. KFDA addresses many U.S. industry concerns in these proposals, including elimination of mandatory Korean language labeling of product type and of excessive restrictions on food. However, additional work will be needed to bring Korea's food code standards up to international standards, specifically those related to chocolate and food additives (*e.g.*, Korea has not effectively adopted the "generally recognized as safe" standard). The revisions to these codes/standards should be finalized by mid-2000.

In general, clearance times are still slow and procedures remain arbitrary. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days. In Korea, import clearance for new products still typically takes 10 to 18 days, and four to six months if a food additive is used that is not specifically recognized in Korea's Food Code for use in that product.

The Korean Ministry of Agriculture and Forestry (MAF), including its National Plant Quarantine Service and National Veterinary Research and Quarantine Service account for the greatest delays in import clearance. These MAF agencies are responsible for administering plant, animal and animal product inspection. MAF imposes numerous requirements that prohibit access – e.g., expansion of U.S. quarantine zones and definitions of quarantinable pests – or delay import clearance – e.g., incubation testing for non-quarantinable pests and product detention based on administrative errors on export certificates – all of which add costs for importers and, ultimately, for consumers.

The United States will continue its dialogue with the Korean Government on its import clearance procedures until clearance times in Korean ports of entry are comparable to those in other Asian ports and Korean procedures are based on science and consistent with international norms. (See also "Standards and Conformity Assessment Procedures.")

Customs Procedures

Korea Customs Service's (KCS's) repeated misclassification of potato preparations to the Harmonized System (HS) heading 1105 has essentially stopped U.S. exports of these products to the Korean market. Preparations of potato flour, flakes, granules or pellets should enter Korea in the unrestricted HS 2005 heading, with a current applied tariff rate of 20 percent and a bound rate of no more than 31.5 percent in 2004. Instead, KCS has been classifying these products in the more restrictive HS 1105, which is subject to a tariff-rate quota (TRQ) with an in-quota quantity of 60 metric tons and an over-quota tariff rate in excess of 300 percent.

Even after assurances by the Korean Government that U.S. potato preparations would enter Korea as preparations under HS 2005, and a letter in which the KCS agreed to classify potato preparations according to internationally recognized criteria, U.S. exporters continue to experience severe market access problems with respect to these products. The U.S. Government will continue to aggressively pursue a definitive resolution to this issue.

U.S. exports of soda ash also have been misclassified, thus resulting in a higher tariff.

In addition, the KCS rejects customs clearance applications on administrative grounds (wrong print, font size, erasure marks on application, etc.), thereby delaying the official start of the customs clearance process.

Finally, Korean regulations often require a local trade association consisting of local competitors to certify or approve import documentation. In addition to requiring the importer to pay a processing fee, which helps to fund the association, this rule requires importers to submit business confidential information to their local competitors.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Standards and Conformity Assessment Procedures (Sampling, Inspection, Testing and Certification)

Korea maintains standards and conformity assessment procedures (sampling, inspection, testing and certification), *e.g.*, in the Korean Food and Food Additives Codes, that deviate from international norms, do not appear to be based on scientific risk assessment, and specifically target imports. In 1999, the Korea Food and Drug Administration (KFDA) began to revise the Food Code and Labeling Standards to bring them more into conformity with international standards. The United States has continually expressed concern with the Food Code's prohibition of the use of non-traditional foods in food and food manufacturing. The proposed revision to the Food Code makes some changes to the rules on food ingredients. But, more changes must be made to these codes to remove existing trade barriers. (See also "Import Clearance Procedures.")

Efforts thus far to obtain market access for in-shell walnuts have been stymied by Korea's insistence on the establishment of an onerous and unnecessary phytosanitary pre-clearance inspection program. The United States also continues to conduct pest risk analysis in an effort to overcome Korea's existing phytosanitary-based import bans on fresh potatoes, apples, pears and stone fruit.

On oranges, Korea's phytosanitary barriers hindered market access for citrus in 1999. Korea's National Plant Quarantine Service (NPQS) delayed in recognizing the U.S. Department of Agriculture's (USDA) lifting of certain quarantine restrictions, and has consistently expanded U.S. fruit fly quarantine zones to include entire counties rather than the scientifically-based areas established by USDA. The Korean Government's policies to expand and extend USDA quarantine zones are some of the most restrictive and onerous in the world. U.S. Government officials have engaged Korean Government officials on this quarantine zone issue through multiple written and verbal representations. The United States will continue to press Korea on this trade policy issue until it is resolved.

Korea continues to maintain government-mandated shelf-life requirements for items such as dairy products packaged in tabletop cartons and bottled water.

Korean Government agencies require pre-approval for pharmaceuticals, chemicals, computers, telecommunications equipment and many other products. Other countries require pre-approval for some products, but the range of products affected is exceptionally large in Korea, and companies must submit documentation that is extraordinarily detailed. Furthermore, in the past, the information provided in the pre-approval/certification process has not been adequately protected and sometimes is "leaked" to the press or competitors. The January of 2000 revisions to the Pharmaceuticals Affairs Act, which will be effective July 1, 2000, require that data provided for approval/certification be protected upon written request of the providing entity. Disclosure of such information will be punishable by fine and imprisonment. That said, the January revisions stipulate that the Korean Government is not required to protect data when it would be contrary to "public interest." It is unclear how Korea defines "public interest." (See also "Intellectual Property Rights Protection.")

U.S. cosmetic producers cite Korea's testing requirements as an impediment to trade. Korea requires animal toxicity data and does not accept a certificate of analysis from a U.S. firm as a substitute. (See also "Cosmetics.") However, on January 1, 1998, the KFDA abolished the annual testing requirement for imported cosmetics and authorized importers to perform the required self-testing, provided that they maintain records for each batch/shipment. In addition, in January of 2000, the KFDA eliminated requirements for pre-approval and local testing at the first importation. Foreign cosmetic manufacturers that have passed a facility inspection by the KFDA also are exempt from testing requirements for each batch.

In the pharmaceutical sector, recent regulatory changes promise to reduce somewhat the delays that companies have typically experienced in obtaining approval from the KFDA for the local sale of products developed outside of Korea. Specifically, the KFDA now permits firms to begin local clinical trials prior to issuance of a Certificate of Free Sale (CFS) by the country of origin. According to the Korean Government, KFDA regulations, finalized in December of 1999, on acceptance of foreign clinical data and approval of new drugs comport with "the spirit" of the International Conference on Harmonization (ICH) guidelines and therefore should render Korea's rules on foreign data and testing more science-based. However, the U.S. Government remains very concerned that requirements for bridging data or studies in the approval process for non-locally produced products could directly contradict ICH guidelines, thereby constituting an unfair barrier to pharmaceutical imports.

Questions also remain on whether implementation of the KFDA's new regulations will speed up drug approvals and reduce redundant additional local studies in another respect. Because the KFDA has no system to differentiate between U.S. prescription and non-prescription (over-the-counter) drugs and nutritional supplements, both types of pharmaceuticals are subject to the same rigorous testing and approval process. (See also "Intellectual Property Rights Protection" and "Pharmaceuticals.") The U.S. Government will continue to closely monitor all aspects of Korea's pharmaceuticals-related regulations.

Korea's motor vehicle standards and certification regulations are complex and excessive. Consistent with the 1998 U.S.-Korea Memorandum of Understanding (MOU) on market access for foreign motor vehicles, Korea has taken various steps to simplify and streamline its standards and certification procedures, including by allowing motor vehicles into the Korean market that conform to the U.S. headlamp standard. The Korean Government has said that by October of 2000 it will join the Global Agreement so that it can actively participate in the international harmonization of motor vehicle standards. However, the U.S. Government remains very concerned about certain standards and certification issues, including the following: (1)

the potential application of new standards to minivans when they are reclassified as passenger vehicles; (2) the ROKG's plan to implement a pass-by-noise standard that does not comply with the provisions in the 1998 MOU; and (3) and the need for prior government approval for the use of remote keyless entry systems, and the associated burdensome documentation requirements. The U.S. Government also is closely monitoring the Korean Government's actions in developing a manufacturer-driven, or self-certification system, which Korea committed to implementing by 2002.

As a condition of its IMF economic stabilization program, the Korean Government has committed to accelerate harmonization of its certification procedures with WTO standards and to strengthen the implementation of these procedures. The Korean Government completed action, *i.e.*, revisions to law, decrees and/or regulations, in 51 out of 56 cases targeted for amendment. Whether or not these changes are liberalizing trade remains to be seen. The areas in which action is still pending include electric appliance safety and telecommunications.

Labeling Requirements

U.S. exporters cite Korea's nontransparent and burdensome labeling requirements as barriers to entry. These requirements are often arbitrarily enforced.

In 1999, the U.S. Government worked with KFDA officials to gain acceptance of foreign language labels if they meet the regulatory labeling requirements of the originating country. In November of 1999, the KFDA released for public comment its proposed new food labeling standards. The process to finalize and implement new food labeling standards should be completed by the summer of 2000.

The Ministry of Environment (MOE) approved new packaging and labeling standards on food in 1999, and will implement them in 2001. These new standards are aimed at reducing the use of PVC-shrink wraps to protect the environment. The U.S. Government will monitor this issue carefully.

In 1999, the Korean National Assembly passed legislation authorizing the Ministry of Agriculture and Forestry (MAF) and the KFDA to label food products enhanced through biotechnology – more commonly known in Korea as genetically modified organisms (GMOs). In November of 1999, MAF issued proposed labeling standards for unprocessed GMOs for public comment. MAF has the authority over labeling requirements on unprocessed GMOs, but not over the conduct of safety assessments on such products. If adopted in their current form, the proposed labeling standards, which mirror those appearing in Europe, would become effective in March of 2001. The standards would initially apply only to corn, soybeans and soybean sprouts. The KFDA has not yet issued, but is in the process of drafting, labeling standards for processed products made from ingredients produced through biotechnology.

GOVERNMENT PROCUREMENT

Korea began implementing the WTO Agreement on Government Procurement (GPA) on January 1, 1997. As part of its GPA commitments, Korea agreed to cover procurement of goods and services over specific thresholds by numerous Korean central government agencies, provincial and municipal governments and some two dozen government-invested companies. The annexes to Korea's GPA membership package specify the value thresholds in SDR terms for coverage of procurement contracts under the Agreement. Korea's Annexes to the GPA can be found on the WTO website.

Korea's coverage under the GPA does not extend to procurement related to, among other things, national security and defense, Korea

Telecom's purchases of telecommunications commodity products and network equipment and procurement of satellites (for five years from entry into force of the GPA for Korea). Purchases by the Korea Electric Power Corporation (KEPCO) are covered, with the exception of certain equipment.

Since 1997, the U.S. Government has received complaints from U.S. companies that entities responsible for procurement for the Inchon International Airport (formerly the Korea Airport Construction Authority (KOACA), now the Inchon International Airport Corporation (IIAC)), discriminate against foreign firms in bidding for projects. These procurement practices, such as the use of domestic partnering, short deadlines and certain licensing requirements, restrict the ability of U.S. firms to participate in bidding opportunities and win contracts.

U.S. officials repeatedly raised this issue in the WTO Government Procurement Committee and in bilateral consultations throughout 1997 and 1998. Korea denies that entities responsible for procurement for the Inchon Airport are subject to its obligations under the GPA. As Korea's position on this issue remained unchanged, the U.S. Government requested consultations under WTO dispute settlement procedures and consultations were held on March 17, 1999. On May 11, 1999, the United States requested the establishment of a WTO dispute settlement panel, which was formed on September 8, 1999, to clarify Korea's obligations with respect to this entity. The meetings of the panel were held in October and November of 1999, and the panel is scheduled to circulate its report in April of 2000.

EXPORT SUBSIDIES

In the past, Korea has aggressively promoted exports through a variety of policy tools. However, in the WTO, Korea committed to phasing out those subsidy programs not permitted under the WTO Agreement on Subsidies and Countervailing Measures.

Under its IMF economic stabilization package, Korea eliminated, earlier than originally planned, four WTO-prohibited subsidies. In addition, Korea is rationalizing its overall subsidies regime, including by notifying information about 19 of its programs to the WTO, as required by WTO reporting obligations, and by reducing the benefits available in 68 others.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

While Korea has taken some steps to strengthen its intellectual property protection laws and enforcement, in 1999 it remained on the Special 301 "Watch List."

Pursuant to its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Korea passed four acts (patent, utility model, design and trademark) in December of 1995, and implemented new copyright, computer software and customs laws in 1996. In 1997, the trademark law was amended to afford protection to three-dimensional trademarks (registered in Korea only). On March 1, 1998, the revised trademark law became effective and the new patent court was established.

The Korean National Assembly passed a revised copyright law on December 7, 1999, which is due to become effective July 1, 2000. The revisions to the law pertain mostly to transmission rights, reproduction in libraries, penalties and calculation of damage for purposes of compensation. The U.S. Government has significant concerns about this copyright law and will press the Korean Government until these concerns have been satisfactorily addressed.

In December of 1999, the Korean National Assembly also revised the Computer Program Protection Act (CPPA), and in so doing, did not provide any opportunity for public comment. The revisions made to the law will become effective on July 1, 2000. The U.S. Government has serious concerns about the CPPA amendments on decompilation, protection against circumvention, registration of exclusive licenses, and others. MIC will begin drafting implementing language for the revised CPPA beginning in February of 2000. MIC officials have given assurance that foreign industry/government input will be solicited. The U.S. Government will continue to press the Korean Government to ensure that U.S. concerns about the revised CPPA are satisfactorily addressed.

In July of 1997, the Korean Patent Act and Utility Model Act were amended to streamline the examination and appellate process and to boost monetary penalties for cases of patent infringement from 20 million Korean *won* to 50 million Korean *won*. U.S. industry believes that deficiencies remain in the interpretation of claims and in the treatment of dominant and subservient patents. Additionally, Korea's recognition of international ownership of foreign patents has been inconsistent, and approved patents of foreign patent holders have been vulnerable to infringement.

In January of 1999, new legislation became effective that provided patent term extension for certain pharmaceutical, agrochemical and animal health products, which are subject to lengthy clinical trials and domestic testing requirements. In the past, the term of patent protection was lost due to delays in the regulatory approval process. The Korean Government has indicated that both imported and locally manufactured drugs are now equally eligible for such patent term extension**.**

Korea still fails to provide full retroactive protection to pre-existing copyrighted works as required under the WTO TRIPS Agreement and adequate and effective patent and trademark protection. The copyright law only provides protection for cartoon characters that possess artistry and creativity. The trademark law does not protect some famous U.S. cartoon characters because they have not been registered as trademarks with the Korea Industrial Property Office (KIPO). Korean courts, in recent decisions, have consequently declined to extend protection to those cartoon characters, as well as to certain textile designs.

There has been some improvement over the past several years on the removal of pirated and counterfeit goods from the Korean market. Through administrative guidance, Korea curtailed the copying and unauthorized selling of certain U.S. copyrighted works created before 1987. Korea also established "special enforcement periods," during which significant resources were devoted to raids, prosecution and other copyright enforcement activities. In 1999, the Supreme Prosecutor's Office initiated a special enforcement period from March through the end of the year. The Office reports 33,338 infringements cases in calender year 1999 (up about 92 percent from 1998) and 1,737 imprisonments (up about 30 percent from 1998).

However, the U.S. software industry reports that foreign software has been largely excluded from the enforcement efforts targeted at the public sector. U.S. businesses and industry groups also report that software piracy by large Korean corporate end-users remains a significant problem. Piracy for home-use and by educational institutions reportedly continues to be a problem as well, and U.S. firms state that they continue to have difficulties bringing law enforcement action against "small-scale" infringers. Finally, although the Korean Government has taken action to reduce illegal software usage in the government, U.S. industry questions the effectiveness of these efforts and remains concerned about the sustainability, transparency and deterrent effect of Korean

Government enforcement efforts with respect to computer software.

Although Korean laws on unfair competition and trade secrets provide some trade secret protection in Korea, these statutes remain deficient. For example, U.S. firms, particularly some manufacturers of chemicals, candy and chocolate, face continuing problems with government regulations requiring submission of very detailed product information, *i.e.*, formulae or blueprints, as part of registration or certification procedures. U.S. firms report that although the release of business confidential information is forbidden by Korean law, submitted information has not been given sufficient protection by government officials and, in some cases, has been made available to Korean competitors or to their trade associations.

The Korean Government has taken some modest steps to remedy data protection problems that affect pharmaceuticals. In February of 1999, the KFDA reinstated the reexamination period that provides *de facto* data protection for four to six years. Additionally, in January of 2000, the National Assembly passed an amendment to the Pharmaceutical Affairs Act that provides for the protection of data submitted to the Korean Government when the submitting company requests such protection. However, the amendment stipulates that the Korean Government is not required to protect data when it would be contrary to "public interest." It is unclear how the Korean Government defines "public interest," and under what circumstances the special exception might apply.

A remaining problem is the lack of coordination between Korean health and safety (KFDA) and intellectual property (KIPO) officials, allowing products that infringe existing patents to be approved for marketing. The Korean Government has not addressed U.S. concerns on this issue, and recently, refused even to engage in discussions of this issue with the relevant authorities.

A new trademark law, which became effective March 1, 1998, contains provisions for prohibiting the registration of trademarks without the authorization of foreign trademark holders by allowing examiners to reject registrations made in "bad faith." However, the legal procedures that U.S. companies must pursue in order to have infringing trademarks canceled are complex, time-consuming and costly. This has discouraged U.S. companies from pursuing legal remedies to address infringement. As such, significant problems still remain with respect to "sleeper" trademark registrations.

Korea has long been a source of exports of infringing goods. Textile designs generally receive protection under Korean design law, not copyright law. However, additional protection for textile designs was afforded in the recently revised Copyright Act, which goes into effect on July 1, 2000. Protections still remain inadequate, however, and some Korean companies pirate U.S.-copyrighted textile designs and export them to third countries, where they compete with genuine U.S.-produced goods. The U.S. Government continues to urge Korean Government officials to increase their efforts toward stopping exports and imports of counterfeit goods in third country trade.

Amendments to the Design Act became effective on March 1, 1998. Under these amendments, KIPO made industrial designs more competitive by extending the duration of the design right and simplifying the design application procedures. A new design registration system was introduced to enable applications for textiles to be registered without examination. This system has resulted in a proliferation of unauthorized registrations of U.S. textile designs.

The U.S. Government has made it clear to the Korean Government in the negotiations on a

Bilateral Investment Treaty (BIT) that the issues raised with respect to Korea's TRIPS consistency must be resolved before we can sign a BIT, especially with respect to copyright protection and protection for pharmaceutical patents and test data.

SERVICES BARRIERS

Korea continues to maintain restrictions on some service sectors through a "negative list." In these sectors, foreign investment is prohibited or severely circumscribed through equity or other restrictions. (See also "Investment Barriers.")

Construction

The construction and engineering markets in Korea were open to foreign competition on January 1, 1996. In 1997, foreign companies also became eligible to bid on public projects, including the massive social overhead capital projects designed to improve basic infrastructure in Korea. Firms still report problems with attempts to renegotiate accepted bid prices, as well as with registration and bonding procedures.

Three separate registration procedures are available to foreign companies: construction, construction supervision and design. The requirements for registration are burdensome because they involve hundreds of pages of documentation.

Foreign companies are required to deposit $250,000 (previously $800,000) as a bond with the Korean Construction Mutual Aid Association in order to obtain a certificate of registration from a Korean regional government. This requirement significantly increases the start-up cost for foreign companies interested in registering in Korea. The Korean Government has stated that the cash bond will be abolished in 2000.

Advertising

The government-affiliated Korean Broadcasting Advertising Corporation (KOBACO) has a monopoly over the allocation of television and radio advertising time. Recently, KOBACO has demonstrated considerable flexibility in offering packages to meet advertisers' needs. U.S. firms reported that KOBACO significantly increased the availability of airtime in lengths other than the Korean standard of 15 seconds, but that the pricing for non-standard time-lengths is financially unattractive. U.S. firms also noted that most packages are offered on a monthly basis, and that spot buying is allowed only when there is unsold airtime. This limits advertisers' ability to run short-term campaigns and to tailor their media delivery. Although the Korean Government proposed allowing in-program advertising, the National Assembly rejected the proposal.

The Korean Broadcasting Commission (KBC) controls advertising censorship procedures, which are nontransparent. The laws and regulations laying out these procedures are very broad and therefore allow considerable subjectivity in interpretation. All television and radio advertising must first be submitted in its final, fully produced form for censorship by the KBC, rather than at the "storyboard" stage. The unpredictability of the censorship process considerably increases the risk and costs of developing new advertising campaigns and of introducing new products.

In some product categories, *e.g.*, cosmetics, the Ministry of Health and Welfare (MHW) allows the local manufacturers' association to review advertising copy in advance of airing or publication. The approval guidelines again are broadly interpreted, and the process notifies competitors of future marketing activity, including for new products. For cosmetics and pharmaceuticals, "before and after" demonstrations of product effectiveness are not permitted. Direct efficacy claims for pharmaceuticals and over-the-counter medicines are not permitted. In addition, advertising of prescription drugs to the general public is prohibited.

Screen Quota

By requiring that domestic films be shown in each cinema a minimum number of days per year (currently, 146 days with reductions to 106 days possible if certain criteria are met), Korea imposes a screen quota on imported motion pictures. The quota acts as a deterrent to trade, cinema construction and to the expansion of theatrical distribution in Korea. In January of 1999, the National Assembly passed a resolution that a relaxation of the screen quota should only be considered if and when Korean films achieve a 40 percent market share. As a result of several Korean blockbuster movies and an infusion of new directorial talent, Korean films nearly achieved the 40 percent market share target in 1999. The screen quota issue has been part of Bilateral Investment Treaty (BIT) negotiations between the United States and Korea.

Foreign Content Quota for Free Terrestrial TV

Korea restricts foreign activities in the audiovisual sector by limiting the percentage of weekly broadcasting time (not to exceed 20 percent) that may be devoted to imported programs.

Foreign Content Quota for Cable TV

Cable channels may devote only 50 percent of airtime to foreign sports, science and documentary programs. All other types of foreign programming, including movies, are subject to an even stricter quota of 30 percent. These quotas are applied on a per-channel basis. Given the strict quota, the existence of only two movie channels and a requirement that cable TV programming and advertising must be translated into Korean, the Korean Government has severely limited the market for foreign programming. However, beginning March 13, 2000, under the new Integrated Broadcast Law, which was passed on December 28, 1999, the Korean Broadcasting Commission (KBC) will have the authority to approve foreign programming without regard to whether it is translated into Korean. Moreover, the Integrated Broadcasting Law provides for the replacement of the current licensing system for cable TV program providers with a simplified registration system in 2001. This should make it easier for Korean program providers to establish additional channels and enhance their ability to provide more foreign programming. The U.S. Government will closely monitor the changes resulting from the new Integrated Broadcasting Law.

Satellite Re-transmission

The Integrated Broadcast Law also mandates that Korean firms that wish to re-broadcast satellite transmissions of foreign programmers must make a contract with the foreign program providers in order to obtain approval from the KBC. Presently, the Korean Government and Korean firms are operating under the assumption that fees for such retransmissions need not be paid.

Accounting

Foreign Certified Public Accountants's (CPA's) can work as accountants in Korea, provided that they meet the following requirements: (1) obtain Korean certification; (2) complete a two-year internship; and (3) register with the public accountants association. These are the same requirements that Korean nationals must meet in order to practice as CPAs.

In order to establish an accounting firm in Korea, the company must be comprised of at least five Korean-certified accountants/partners. Any established accounting firm in Korea is prohibited from making an investment in, or providing a debt guarantee to, any other firm in excess of 25 percent of the accounting firm's paid-in-capital. There are no restrictions with respect to the naming of an accounting firm in Korea as long as the firm (1) meets the legal criteria for establishment, *i.e.*, a minimum of five of the partners must be Korean-certified accountants; and (2) attaches "accounting firm" to the end of its name.

Engineering

In December of 1998, the Ministry of Science and Technology (MOST) abolished the "technology filing system," under which MOST reviewed applications by domestic and foreign entities to provide engineering services on a case-by-case basis. There are no mandatory restrictions on foreign engineering services specified in Korean law or regulation. However, procuring agencies (national, local and private) can specify particular conditions/requirements for engineers and engineering services depending on the nature of the project. In this regard, specifications can be written for engineering services from firms that are locally established, which could be problematic.

Except in the area of architectural design, the Ministry of Construction and Transportation (MOCT) imposes no requirements that engineering services be provided on a joint venture basis. Foreign engineers must "file" with MOST and receive approval from that ministry before being able to provide engineering services in Korea. The criteria MOST uses to review foreign engineer filings are similar to those applied to applications from Korean nationals. Foreign engineering firms are free to hire locally qualified/certified engineers.

Legal

At the time of Korea's accession to the OECD in 1996, the Korean Government amended the "Lawyers Act" to permit non-Koreans to be licensed to practice law in Korea, provided that they meet the same criteria that are applied to Korean nationals. The Korean Government also amended the "Regulation on Foreign Investment" in 1997, so as to allow for foreign investment in the legal sector. Any individual not qualified as a lawyer under Korean law is prohibited from providing legal services to Korean and foreign clients in Korea, and from establishing a law firm/office in Korea. In Korea, there is no provision for "foreign legal consultants," although in practice there are many foreign attorneys in Korea who perform a legal advisory function of sorts.

Financial

Korea agreed to bind its OECD commitments on financial services market access in the WTO as a condition in its IMF economic stabilization package. In January of 1999, Korea provided WTO members with a revised and somewhat improved schedule of financial services commitments that entered into force as of September of 1999. The U.S. Government will continue to work with Korea to ensure that it meets its WTO and OECD financial services commitments, and to bring about more liberal treatment of foreign financial services providers.

Insurance

After Japan, Korea is the second largest insurance market in Asia, with $43.4 billion in premiums paid in the fiscal year ending March of 1999. The environment for foreign insurance companies has improved considerably since Korea implemented a series of regulatory changes after its 1996 accession to the OECD. Korea incorporated many of these changes, including expanded market access and national treatment, into the 1997 WTO Financial Services Agreement.

The 1997-98 financial crisis led to a restructuring of the Korean insurance industry. In 1998, the newly established Financial Supervisory Commission (FSC), which is a unified financial services regulatory authority intended to be independent of the Korean Government, revoked the licenses of four life insurance companies and merged two existing surety and fidelity insurance companies on the grounds of insolvency. In addition, 16 life and non-life insurance companies entered FSC-supervised workout programs. (A workout program is a voluntary, out-of-court debt restructuring framework, which may or may not involve government oversight.)

The Korean Government is gradually liberalizing foreign entry into the life and non-life insurance markets and has lifted some restrictions on partnering with Korean insurance companies and on hiring Korean insurance professionals. In April of 1998, Korea liberalized insurance appraisal and activities ancillary to the management of insurance and pension funds. Korea's brokerage market was opened to foreign firms in April of 1998. Several foreign reinsurance firms have since entered the market.

Banking

The Korean banking sector is undergoing structural reform aimed at ending the policy-directed lending of the past. The Korean Government has committed to refrain from interfering in bank lending and management decisions, except with regard to prudential supervision. It is important to note, however, that in the aftermath of the economic crisis, the Korean Government nationalized many of its commercial banks. Currently, three of these banks remain nationalized. The Korean Government retains a majority ownership in several of the largest commercial banks in Korea and a significant stake in a number of others, including a 49 percent share of Korea First Bank. However, late in 1999, the Korean Government approved a sales contract for Newbridge Capital to acquire 51 percent of Korea First Bank.

Foreign banks are currently allowed to establish subsidiaries or direct branches. In 1998 and 1999, the Korean Government opened the capital markets to foreigners, permitting foreign financial institutions to engage in non-hostile mergers and acquisitions of domestic financial institutions.

Korea continues to limit the operations of foreign bank branches based on local-capital versus parent-bank capital. These limits affect: (1) loans to individual customers; (2) foreign exchange trading; and (3) foreign-bank capital adequacy and liquidity requirements. Foreign banks are subject to the same lending ratios as Korean banks, requiring them to allocate a certain share of their loan portfolios to Korean companies other than the top five *chaebol*s and to small and medium enterprises.

All banks in Korea continue to suffer from a non-transparent regulatory system and must seek approval before introducing new products and services – an area where foreign banks are most competitive. The foreign exchange market continues to be heavily regulated, with tight controls on the introduction of new instruments, where U.S. banks would be especially competitive. The Korean Government temporarily lifted some restrictions during the financial crisis, for example, allowing foreign banks to increase their swap lines as a way to generate additional foreign exchange. Although the Korean Government has said that it has no plans to decrease the existing lines, Korea's huge foreign exchange reserves, which could reach $100 billion in 2000, could prompt the Government to do so. The interbank money market is still underdeveloped and is not a stable source of funding for foreign bank activities.

The April 1999 foreign exchange law liberalized foreign exchange, import and export transactions. The new law will deregulate the foreign exchange market by liberalizing primary corporate transactions, including, *inter alia,* capital transfers and bank certification requirements for settling trade finance by December 31, 2000. In July of 1998, the Korean Government dropped restrictions on capital transactions, including limits on capital imports under deferred payment arrangements.

Securities

The Korean Government places no limits on foreign ownership of listed bonds or commercial paper, no longer restricts foreign ownership of securities traded in local markets and has almost entirely removed foreign investment ceilings on Korean stocks. In the case of state-owned companies, aggregate foreign investment limits now are 25 to 33 percent, while individual investor limits are three to fifteen percent. These limits are scheduled to be raised, but not completely abolished. Despite considerable liberalization, foreign securities firms in Korea continue to face some non-prudential barriers to their operations.

Foreign-based, non-financial businesses in Korea are subject to high cost procedures and restrictions, inappropriate to Korea's level of development and financial sophistication. For instance, virtually all inter-company transfers are subject to certification, a cumbersome, costly and unnecessary requirement, particularly for transactions between subsidiaries.

INVESTMENT BARRIERS

The Kim Dae Jung Government made a strong commitment to create a more favorable investment climate and to facilitate foreign investment. The centerpiece of its effort is the 1998 Foreign Investment Promotion Act (FIPA). The FIPA: (1) increased the number of business sectors open to foreign investment (currently, only four remain closed and 17 partially closed to FDI); (2) provided more tax incentives; (3) simplified investment procedures; and (4) established Foreign Investment Zones. The Korean Government must automatically approve a foreign investor's notification unless the activity appears on an explicit "negative list" or is somehow related to national security, the maintenance of public order or the protection of public health, morality or safety.

One of the most significant liberalization steps that the Korean Government has taken is the revision to the Alien Land Registration Acquisition Act of 1998, to remove restrictions on the direct purchase of land by foreigners. Non-Koreans, however, still cannot produce some agricultural products for commercial purposes, nor can agriculturally-zoned land be taken out of agricultural production.

Also, since May of 1998, foreigners can purchase 100 percent of the target company's outstanding stock without consent of its board of directors.

As noted above, capital market reforms have eliminated some ceilings on aggregate foreign equity ownership and individual foreign ownership and limits on foreign investment in the government, corporate and special bond markets, and have liberalized foreign purchases of short-term financial instruments issued by corporate and financial institutions. However, the Korean Government still maintains foreign equity restrictions with respect to investments in Pohang Iron and Steel Company (POSCO), KEPCO, Korea Telecom, and many types of media, schools and beef wholesaling.

While the more liberalized Korean investment regime has increased U.S. investor interest in Korea, additional changes, *e.g.*, tax exemptions, enhanced labor-market flexibility, better intellectual property protection and a more transparent regulatory environment, could greatly improve Korea's attractiveness as a destination for foreign investment.

Korea has not notified the WTO of any measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS).

ANTI-COMPETITIVE PRACTICES

Competition Policy

The Korea Fair Trade Commission's (KFTC's) role as enforcer of Korea's competition law and advocate of competition policy and corporate restructuring has continued to expand. KFTC powers to conduct investigations and to impose tougher penalties were enhanced in January of 1999 with the passage of the revised Fair Trade Act. The Act was subsequently revised on December 28, 1999, to reinstitute inter-subsidiary equity investment ceilings of 25 percent of paid-in capital. This regulation, which targets the *chaebols*, had been dropped in February of 1998 to facilitate corporate restructuring. The Act also raised penalties for illegal inter-subsidiary trading from two percent of sales to five percent of sales. The KFTC'S longer-term objectives continue to include installing a more transparent, rules-based system that is conducive to, and consistent with, a free and competitive market-based economy.

The KFTC's deregulation task force has actively participated in the Administration's efforts to cut by nearly half the roughly 11,000 government regulations in force in 1998.

The KFTC continues to use its powers to investigate the *chaebols*, particularly the five largest, to help the government to achieve its corporate reform objectives. In the most noteworthy example, in July of 1998, the KFTC imposed on the "Big Five" fines totaling approximately $60 million for illegally subsidizing subsidiaries. The *chaebols* are appealing this decision through the court system. In February of 1999, the KFTC also fined five mid-ranking *chaebols* approximately $15 million for illegally subsidizing subsidiaries.

Despite the heightened level of enforcement activity by the KFTC, it still has a weaker position in the Korean Government relative to the powerful industrial ministries. For competition policy to take root in Korea, a stronger KFTC is a prerequisite. The KFTC's opaque and arguably uneven application of the Fair Trade Law also undercuts its credibility in Korea and abroad. For example, the KFTC seems to have taken a rather passive attitude towards reviewing the so-called "Big Deals" (corporate swaps pushed by the Korean Government), that would seem to raise competition policy issues in Korea.

ELECTRONIC COMMERCE

Korea's Electronic Commerce Basic Law and the Electronic Signatures Law went into effect on July 1, 1999. These acts encourage private sector development of electronic commerce in Korea and codify authorization of electronic signatures as legally binding on consumers and businesses. Korea stated its intention not to impose customs duties on the flow of information by electronic means in the U.S./Korea Joint Statement on Electronic Commerce signed in November of 1998.

In 2000, the Korean Government anticipates enactment of additional laws to support electronic commerce, including laws covering the security of electronic transactions and electronic payment systems. The U.S. Government will continue to coordinate with Korea to foster the development of electronic commerce in accordance with guidelines set forth in the joint statement.

OTHER BARRIERS

Lack of Transparency

Fundamental to the transparency of Korean laws, regulations, decrees, guidance and other subordinate rules is the availability of these documents in official translations. The Korean Government has repeatedly refused to provide such translations, or else disputed translations that have been published by its own ministries. When the U.S. Government has attempted to resolve a trade dispute involving a Korean law or subordinate rule, Korean officials have avoided dealing with the barrier built into the law or rule by arguing that the U.S. Government is using an unofficial or incorrect Korean or U.S. translation. Trade disputes cannot be expected to be equitably resolved under such circumstances.

Many Korean trade-related laws and regulations lack specificity. Their implementation is directed by internal guidance, which is developed by the relevant ministries and rarely published. In some cases, the regulations themselves are not made public. Korean port officials exercise a great deal of discretion in applying the broad rules in the laws and regulations. This leads to inconsistency of application and often the most trade restrictive application, as well as uncertainty among business interests.

Imported food products remain particularly susceptible to capricious interpretation of ambiguously worded labeling and product categorization standards. Headquarters' intervention is too often required to clear a product through port inspection, at great time and monetary cost to the importer and ultimately, to the consumer.

The Korean Government has failed to produce advance or timely notice of changes to laws and regulations, either in domestic official publications or in the WTO. This has precluded interested parties from commenting on the effect of the proposed changes and/or made it difficult or impossible for foreign companies to adjust to the new rules when they are implemented. One recent example is the Korean National Assembly's passage of a revised Computer Programs Protection Act (CPPA) without prior notice and without providing for the opportunity for public comment.

While progress has been made on transparency issues, *e.g.*, by the Korea Food and Drug Administration (KFDA) in its approach to revamping Korea's Food and Food Additive Codes and labeling standards, additional improvement is necessary to ensure that lack of transparency no longer impedes trade.

Frugality Campaigns and Anti-Import Bias

Frugality campaigns, ostensibly directed at individual consumption but effectively targeting imported goods, are another barrier that U.S. firms face in Korea. The Korean Government has denied involvement in the anti-import aspect of the frugality campaign, but some U.S. firms complain that Korean officials continue to take arbitrary actions that impede imports. Furthermore, Korean Government agencies have reported imports of sports equipment and motor vehicles as "luxury goods," or failed to correct the record when the Korean media describes imports as "luxury goods." Labeling imports as "luxury goods" means attaching a negative connotation to the purchase of such goods by Korean consumers, thereby contributing to anti-import bias. At the December of 1999 consultations between the U.S. and Korean Governments on the implementation of the 1998 Memorandum of Understanding (MOU) on market access for foreign motor vehicles, U.S. Government officials noted a number of instances in which the Korean media has published stories that leveled criticism at imports or their owners.

While the Korean Government has taken action to address instances of anti-import activity and to promote a better understanding among Korean citizens of the benefits of free trade and open competition, as required under the 1998 MOU, U.S. industry and U.S. Government concerns about anti-import bias in Korea have heightened recently. In February of 2000, a high level Korean Government official was reported as publicly cautioning against the growing level of imports in Korea. In addition, non-government Korean organizations continue to engage in activity targeting foreign commercial interests. Hyundai, for example, issued a public statement against a U.S. motor vehicle company that has demonstrated an interest in investing in Korea.

A poll conducted by an international marketing firm in the fall of 1999 revealed that almost 60 percent of Koreans still believe that purchasing a foreign car would be detrimental to Korea. It is clear that persistent economic nationalism will continue to create fertile ground for Korean frugality campaigns oriented against imports. The U.S. Government has told the Korean Government that the import motor show scheduled for May of 2000 is an opportunity for Korea to demonstrate that the pattern of anti-import bias against foreign motor vehicles is changing for the better. The United States will continue to aggressively urge the Korean Government to end anti-import activity in Korea and to actively on a sustained basis contribute to Korean citizens' understanding of the benefits of free trade and open competition to the Korean economy.

Motor Vehicles

In the October 1, 1997 Super 301 report to Congress, the U.S. Trade Representative (USTR) identified Korean barriers to motor vehicles as a Priority Foreign Country Practice (PFCP). On October 20, 1997, the USTR initiated a Section 301 investigation with respect to certain acts, policies and practices of the Government of the Republic of Korea that posed barriers to imports of U.S. autos into the Korean market.

After intense bilateral negotiations, on October 20, 1998, the United States and Korea concluded a Memorandum of Understanding (MOU) to improve market access for foreign motor vehicles. Under this MOU, Korea agreed to: (1) bind in the WTO its 80 percent applied tariff rate at eight percent; (2) lower some of its motor-vehicle-related taxes and to eliminate others, including through the development of a long-term plan to substantially reduce the tax burden on motor vehicle owners; (3) streamline its standards and certification procedures and adopt a manufacturer-driven self-certification system by 2002; (4) establish a new mortgage mechanism to make it easier to purchase motor vehicles in Korea; and (5) actively and expeditiously address instances of anti-import activity and proactively educate Korean citizens on the benefits of free trade and competition. As a result of the Korean Government's commitment to undertake these measures, the USTR terminated the Section 301 investigation, but continues to closely monitor Korea's implementation of the 1998 MOU through regular detailed consultations and dialogue between consultations.

The first formal review of Korea's implementation of the 1998 MOU took place in April of 1999, six months after the conclusion of the agreement. In December of 1999, the U.S. and Korean Governments met again for detailed consultations on the steps that Korea has taken and will take to implement this agreement. While implementation of some of the specific MOU provisions is "on track," the U.S. Government is seriously concerned about: (1) low import sales (only 2,401 foreign vehicles sold in Korea in 1999, representing less than one-fifth of one percent of the market); (2) the lack of meaningful restructuring in the Korean motor vehicle sector; (3) ongoing instances of anti-import activity, including statements made recently by a high level Korean Government official; (4) the lack of a long-term plan to further reduce and eliminate reliance on engine-displacement-based taxes; (5) standards/certification and other tax issues, such as the potential application of new standards to minivans when they are reclassified as passenger vehicles, the timing of tax rate increases associated with reclassification, the Korean Government's plans on pass-by-noise and others. In addition to working to ensure Korea's compliance with the MOU in these areas, the U.S. Government also will monitor the implementation of the new mortgage system, and work with the Korean Government as it develops its self-certification system, which is to be implemented by 2002, per the MOU. Formal consultations will continue throughout 2000 and beyond.

As referenced above, corporate restructuring efforts undertaken thus far in Korea have yielded little change in the structure of industrial sectors, including motor vehicles and others (steel and shipbuilding). The U.S. Government has noted in representations to the Korean Government that for restructuring to be considered meaningful it must yield efficient, market-driven companies, and the process through which it is carried out must be open, transparent, treat foreign creditors equitably and comport with Korea's international obligations. The U.S. Government will continue to monitor restructuring efforts in the Korean motor vehicle and other sectors as the outcome of such efforts is directly related to the extent to which U.S. and other foreign companies are afforded fair access to Korea's market, and to which foreign companies are competing with Korean firms on a "level playing field."

Pharmaceuticals

U.S. concerns on trade in pharmaceuticals with Korea have included: (1) discrimination in the Korean reimbursement pricing system for innovative pharmaceuticals; (2) lack of protection of intellectual property rights (IPR), particularly with respect to clinical data and patents (see also "Intellectual Property Rights Protection"); and (3) burdensome and non-science-based Korean regulatory requirements, particularly on acceptance of foreign and clinical test data and approval of new drugs.

USTR, in its 1999 Super 301 trade report, listed pharmaceuticals trade issues as the bilateral trade expansion priority on the U.S.-Korea agenda. Throughout 1999, the U.S. and Korean Governments had a number of letter exchanges and discussions regarding U.S. concerns about the discriminatory treatment of foreign research-based pharmaceuticals in Korea. As a result, the Korean Government has taken some steps to address U.S. concerns. In July of 1999, the Korean Ministry of Health and Welfare (MHW) began listing imported pharmaceuticals on the Korean national health insurance reimbursement schedule. In November of 1999, the MHW also introduced a new system to reimburse hospitals for drugs at actual transaction prices (ATP) to eliminate the illegal hospital margins that were applied only to domestic drugs. The reimbursement system that was in place before the implementation of the ATP system discouraged hospitals and other large end-users from buying imported drugs. Korea also has taken some minor steps to address U.S. concerns on data protection and regulatory issues. Korea eliminated the requirement for the submission of a Certificate of Free Sale before Phase III clinical trials can begin in Korea.

That said, Korea still maintains barriers to trade in pharmaceuticals. The pharmaceutical pricing system under Korea's national health insurance scheme has raised questions of discrimination against innovative drugs. In 1999, the Korean Government formed a task force to revisit its method for determining pharmaceutical reimbursement prices. At this stage, the Korean Government is considering the recommendation of the task force.

On IPR, TRIPS-consistency concerns have been raised about Korea's rules on clinical data protection. Also, concerns have been raised about Korea's failure to provide adequate and effective protection for pharmaceutical patents. Korea does not provide for effective coordination between health and intellectual property authorities and allows products that infringe existing patents to be approved for marketing in Korea. The Korean Government has not addressed U.S. concerns about this issue, and recently, refused even to engage with the relevant authorities in discussions of this issue with U.S. officials.

Finally, Korea has impeded market access for foreign pharmaceuticals by requiring redundant clinical testing in the drug approval process. The United States has emphasized the need for the Korean Government to follow through on its statements that it will implement international guidelines on the acceptance of foreign clinical test data, make the drug approval process for new drugs more science-based and shorten the overall drug approval process in Korea. The United States will continue discussions with Korea on pharmaceuticals trade issues.

Cosmetics

Impediments to entry and distribution of foreign cosmetic products in Korea have included the following: (1) the Korean Government's delegation of authority to the domestic industry association to screen advertising and information brochures prior to use; (2) provision of proprietary information on imports to Korean competitors; (3) redundant testing; (4) burdensome import authorization and tracking requirements (record keeping from import to sale); and (5) requirements for animal toxicity test data. During July and August of 1997, U.S. Government officials made representations to Korean Embassy officials on these and other barriers that were in effect at the time. The U.S. Government cited Korea's cosmetics-related measures as a bilateral priority in the 1997 Super 301 report.

As noted in the "Standards, Testing, Labeling and Certification," section, however, the Korea Food and Drug Administration (KFDA) has: (1) abolished the annual testing requirement for imported cosmetics; (2) authorized importers to perform the required self-testing, provided that they maintain records for each batch/shipment; and (3) eliminated requirements for pre-approval and local testing at the first importation. Also, foreign cosmetic manufacturers that have passed a facility inspection by the KFDA are exempt from testing requirements for each batch. The U.S. Government will continue to press the Korean Government in a variety of fora until U.S. concerns on its barriers to entry and distribution of cosmetics are satisfactorily addressed.

Steel

The United States has long been concerned with the Korean Government's extensive involvement in, and support for, Korea's steel sector and its steel-using industries. These policies led to substantial over-investment and overcapacity in Korea's steel industry and related sectors, and, in turn, export surges to the United States, especially during the recent Asian economic crisis. Korean Government-owned banks extended substantial "soft loans" to several steel producers, apparently without regard for creditworthiness. Korea accounted for nearly 20 percent of the substantial growth in U.S. imports of steel in 1998. While in 1999, U.S. imports of steel from Korea declined 14 percent from 1998, they remained 80 percent above the 1997 level.

In June and November of 1998, President Clinton stressed to Korean President Kim Dae Jung the need for the Korean Government to address U.S. concerns about steel. In high level exchanges of letters on steel issues, the Korean Government provided assurances that: (1) it will not direct or support Hanbo, one of the largest recipients of soft loans that went bankrupt in 1997; (2) the impending sale of Hanbo will be managed by an independent international agent and will be market-driven; (3) it will not provide any market-distorting subsidies to the steel sector; and (4) POSCO had abolished its dual pricing system and adopted transparent pricing policies that would not favor any end-user based on its role in the Korean economy or on its export orientation. In concert with efforts to reach agreement on these letters, the U.S. and Korean Governments launched a series of consultations to address U.S. steel concerns. On August 5, 1999, the White House also announced its Steel Action Program stating that the U.S. Government would undertake bilateral initiatives with steel exporting nations, including Korea, to address a broad range of unfair practices that support economically unjustifiable capacity.

In the post-crisis period, the Korean Government announced its intention to privatize POSCO by the end of 1999. The government did not accomplish this stated objective, but reduced its ownership stake in POSCO from 20 percent in 1998 to 14.74 percent at the end of 1999. Currently, the government-owned Korea Development Bank (KDB) holds 9.84 percent and the Korea Industrial Bank (KIB), of which the Korean Government owns 98 percent, has a 4.9 percent stake in POSCO. POSCO's size and current monopoly producer status in Korea of some key steel products continue to raise concerns of possible unfair and anti-competitive practices and the U.S. Government continues to urge expeditious and full privatization.

On March 9, 2000, Korean officials confirmed that Hanbo's creditors had agreed on a final legal contract for the sale of Hanbo to a consortium that includes U.S. interests. It is expected that the sale will not be final for some months. The U.S. Government will continue to monitor the Hanbo sale until it is completed, and will examine its terms to ensure that they are consistent with commitments made by the Korean Government.

The overall objectives of the ongoing dialogue between the U.S. and Korean Governments on steel continue to be: (1) expeditious, complete and market-based privatization of POSCO; (2) finalization of a market-based sale of Hanbo Steel and operation of the company without Korean Government direction or support; and (3) fair trade in steel products.

Telecommunications

In July of 1996, USTR identified Korea as a Priority Foreign Country (PFC) under Section 1374 of the 1988 Omnibus Trade and Competitiveness Act for failure to address a range of impediments in the Korean telecommunications market. Ensuing bilateral negotiations resulted in an agreement in 1997 in which Korea committed to ensuring that foreign telecommunications equipment suppliers would be treated fairly in areas including procurement, certification, type approval, protection of intellectual property and technology transfer.

In 1999, Korea began to plan for licensing third-generation wireless services. The U.S. Government has consulted with the Korean Government to ensure that the licensing process does not discriminate against service suppliers or equipment makers based on choice of technology and will continue to review Korean compliance with the 1997 agreement.

U.S. companies continue to face investment restrictions in Korea's telecommunications sector, for example with respect to telecommunications services providers, despite liberalization of investment restrictions implemented by the Korean Government since the 1990s. U.S. firms currently operate only as minority investors in telecommunications services providers in Korea. The U.S. Government will continue to engage the Korean Government to enhance access for U.S. companies in the telecommunications market in Korea.